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Honorable Judge Samuel J. Steiner
DATE: November 12th, 2010
TIME: 9:30 a.m.
Chapter 11
LOCATION: Seattle
RESPONSE DUE: Friday, Nov. 5, 2010

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

Adam R. Grossman,

Debtor.

CHAPTER 11 BANKRUPTCY

CASE NO. 10-19817-SJS

DEBTOR-IN-POSSESSION’S OBJECTION
TO BORODIN’S MOTION FOR ORDER
FOR APPOINTMENT OF CHAPTER 11
TRUSTEE

COMES NOW THE DEBTOR-IN-POSSESSION (“Debtor”), by and through his undersigned attorney, and in response to the Motion for Order for Appointment of Chapter 11 Trustee (“Motion”) filed by Jill Borodin (“Borodin”), states the following:

I. Borodin Lacks Standing to Bring this Motion before the Court

Borodin states in her Motion that she is “a creditor herein.” (See Borodin’s Motion, page 1, line 23). This is false.

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2 Borodin has filed no Claims against the Debtor's estate as of the date of this
3 Objection. (See Claims Register for this case as of November 5, 2010, Attached as Exhibit
4 A). Debtor has not listed Borodin as a creditor in Debtor's schedules. Borodin may,
5 perhaps, *become* a creditor at some future date due to a ruling of the State Court in Debtor &
6 Borodin's divorce proceeding (discussed below), but Borodin's claim to be a creditor now,
7 at the time of the filing of her Motion, is premature and erroneous. Musso v. Ostashko, 468
8 F.3d 99, 108, 56 Collier Bankr.Cas.2d 1785, Bankr. L. Rep. P 80,771, (C.A.2 (N.Y.), 2006).
9 Accordingly, as Borodin has no standing to bring this Motion, the Motion should be denied.

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11 **II. Appointment of Trustee is Not Warranted;**
12 **Borodin Fails to Meet Her Burden of Proof**
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14 There is strong presumption that debtor should be permitted to remain in possession.
15 In re Adelphia Communications Corp., 336 B.R. 610, 655 (Bkrcty.S.D.N.Y., 2006) citing
16 Comm. of Dalkon Shield Claimants v. A.H. Robins Co., Inc., 828 F.2d 239, 241 (4th
17 Cir.1987); Ionosphere, 113 B.R. at 167; In re Evans, 48 B.R. 46, 47 (Bankr.W.D.Tex.1985);
18 In re Eichorn, 5 B.R. 755, 757 (Bankr.D.Mass.1980). Appointment of a trustee is the
19 exception and not the rule in a Chapter 11 case, Matter of Marin Motor Oil, Inc., 689 F.2d
20 445, 446 (C.A.N.J., 1982) and appointment of a Chapter 11 trustee is an unusual remedy. In
21 re Taub, 427 B.R. 208 (Bankr. E.D. N.Y. 2010). Further, appointment of a trustee in
22 Chapter 11 case is an extraordinary remedy, and one which may impose a substantial
23 financial burden on a hard-pressed debtor seeking relief under the Bankruptcy Code. Matter
24 of Anchorage Boat Sales, Inc., 4 B.R. 635, 644 (Bankr.E.D.N.Y., 1980). The Anchorage
25 Boat Sales court continued that "in many cases, the appointment of a trustee may preclude
26 an effective reorganization because of the substantial administrative expenses which must be
27 paid by the debtor's estate." Id.
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1 Additionally, the party seeking appointment of a trustee bears the burden of proof, and
2 the need for a trustee must be shown by clear and convincing evidence. In re Adelphia
3 Communications Corp., 336 B.R. 610, 655-656 (Bkrtcy.S.D.N.Y., 2006) citing In re Sharon
4 Steel Corp., 871 F.2d 1217, 1225 (3d Cir.,1989).

5 It is important to note that the Debtor and Borodin are in the midst of dissolution
6 proceeding in King County Superior Court. The case no. is 09-2-02955-9. This divorce
7 action was filed by Borodin on April 15, 2009. This dissolution proceeding has, to date,
8 involved over 235 individual pleadings. In fact, in the month of October, 2010 alone, there
9 have been forty (40) docketed items, not including discovery requests and production.
10 Further, some pre-trial issues are now before the State Court of Appeals (Trial Court docket
11 line 201, filed on Sept. 28, 2010). This is, to put it mildly, a contentious divorce proceeding.
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13 Borodin states in her Motion that the need to amend various items on Debtor's
14 Schedules and Statement of Financial Affairs was brought to Debtor's attention during the
15 first 341 hearing (See Borodin's Motion, pages 2, line 13 through page 3, line 34). Debtor
16 filed the various Amendments discussed during the first 341 hearing on October 28, 2010.
17 (See docket entries nos. 39, 40, & 41).
18

19 Borodin further states in her Motion that Debtor has retained and paid special counsel
20 to represent him in Divorce Court. (See Borodin's Motion, page 3, lines 36-45 through page
21 4, line 6). Debtor has filed and noted for hearing an Application to Employ Emily Tsai as
22 Debtor's Special Counsel for the Divorce Action Nunc Pro Tunc along with the
23 corresponding Declaration of Emily Tsai. (See docket entries 42 & 43).
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1 Borodin further states in her Motion that “the Debtor’s testimony at the 341 meeting has
2 revealed that his businesses hold significant liquid assets available for the payment of a Chapter
3 11 trustee.” (See Borodin’s Motion, page 9, lines 8-15). Again, this is difficult to address as
4 can be clearly seen by simply examining Debtor’s Amended Schedule A and Amended
5 Schedule B. (Part of Docket Item 40, Attached as Exhibit B). The overwhelming majority
6 of Debtor’s assets are secured pieces of real property and are particularly *not* liquid.
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8 Borodin further states in her Motion that Debtor has “stubbornly refused” to produce
9 his financial affairs [sic] to the bankruptcy court. (See Borodin’s Motion, page 4, lines 26-
10 31). This is difficult to address other than to say that the amendments and special counsel
11 fee application requested in the first 341 hearing have all been filed openly and with candor
12 to this court. It is noteworthy that Borodin’s bankruptcy counsel failed to attend the second
13 341 hearing on November 3, 2010 to listen to the apt questions placed by counsel for the
14 United States Trustee and to hear Debtor’s detailed answers. Which is in stark contrast to
15 Borodin’s theme throughout her Motion that Debtor is ‘stubbornly refusing’ to produce
16 records of his financial affairs.
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20 WHEREFORE, the Debtor respectfully requests that this Court enter an Order
21 denying the Motion in its entirety with prejudice and award such further and different relief
22 as this Court deems proper and just.
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25 **Signature on Following Page**
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1 Respectfully submitted this 5th day of November, 2010.

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3 LAW OFFICE OF MATTHEW D. O'CONNER

4 By: /s/ Matthew D. O'Conner
5 Matthew D. O'Conner, WSBA #27061
6 Attorney for Debtor-in-Possession
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